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ABSTRACT

Recent proposals to implement teacher incentive pay or merit pay plans have failed to recognize that in most states such plans must be negotiated and administered through collective bargaining at the local district level. The traditional collective bargaining process makes major changes difficult to enact; both sides must bluff, threaten, and make concessions, and neither side is likely to obtain enactment of new policy without complete commitment and a willingness to abandon other demands. To develop a workably designed incentive pay plan with some chance of acceptance, district and union representatives should work together as joint committees; but organizing such committees satisfactorily takes a great deal of effort in its own right. Implementing incentive pay plans may be easier if the plan adopted is identified as experimental and if means are readily available for responding to any grievances arising from the plan's administration. Although collective bargaining practices may make implementation of such measures as incentive pay plans difficult, the process can also help ensure that any plan finally adopted will more likely be equitable, workable, appropriate to local conditions, and acceptable to teachers as a means of making the schools more productive. (PGD)

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INCENTIVE PAY AND COLLECTIVE BARGAINING IN PUBLIC EDUCATION

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Abstract

Current proposals to implement teacher incentive (or merit) pay plans fail to recognize that in most states such plans must be negotiated and administered through collective bargaining. This paper examines the development, implementation, and administration of incentive pay plans through collective bargaining, including the use of negotiation tactics and labor-management committees. The paper concludes by discussing the role of collective bargaining in arriving at constructive solutions to problems in education.

The reform of our nation's schools became a major political issue after the release of A Nation at Risk by the National Commission on Excellence in Education in April 1983. Among its other proposals, the National Commission recommended that the conventional method of paying teachers on the basis of their years of service and training be replaced by merit or incentive pay.[1] Within a brief space of time, the push for incentive pay systems came to dominate the educational reform debate despite the opposition of the NEA and the AFT to such plans.[2]

According to a recent report, 14 states have enacted or approved "performance-based incentive plans" for implementation or pilot testing, 8 states have legislative or state board of education mandates to develop plans, and 15 states are considering incentive plans for either teachers or administrators or

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1 Merit pay is a general concept with many variations, and as a political label it has been applied to many different and unrelated compensation proposals. In education, "old-style" merit pay generally ties salaries to assessments of the form and content of a teacher's activities in the classroom. "New-style" merit pay normally ties salaries to some measure of a teacher's "output," i.e., student scores on standardized tests. In the private sector, one would probably define a "new-style" plan as incentive pay, while an "old-style plan" would tend to be defined as merit pay. In this paper, we have generally used the term "incentive pay," as we did not find it necessary to distinguish between specific types of plans. For our purposes, incentive pay is defined as a compensation system that links the salaries of individual teachers to some type of evaluation of their performance.

2 The nation's largest teacher union, the National Education Association, has voiced strong opposition to incentive pay, and its smaller rival, the American Federation of Teachers, though seemingly less adamant in its opposition, has expressed its own reservations.

both (Career Ladder Clearinghouse, 1985).[3]

In most areas of the country, however, it is simply not possible to consider the adoption of such incentive pay proposals without taking into account how collective bargaining operates in public education. It has bewildered those of us who study collective bargaining in our schools that the recent wave of educational reform initiatives has by and large failed to recognize that in the majority of states incentive pay plans must be negotiated and administered through collective bargaining.

Thirty-two states now have bargaining laws for teachers that require school districts and teacher unions to negotiate the terms and conditions of teachers' employment in good faith (Commerce Clearing House). Even in most states without bargaining statutes, collective bargaining is well established as the means of determining teacher compensation. Over 70 percent of the nation's school teachers are members of employee organizations that engage in some form of negotiating activity (U.S. Department of Commerce, 1976). There is little doubt that in these states incentive pay, and related compensation plans such as career ladders, will be considered a mandatory topic of bargaining.

The success or failure of incentive plans, then, will surely

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3 Many of these plans are not "pure" incentive plans, but rather concentrate on differentiating job duties for teachers. Such plans are usually termed "career ladders" (see Bacharach, Conley and Shedd, Summer, 1986.) Incentive plans put an emphasis on "paying for performance" (rather than changing the job of teaching)-- and these are the type of plans that are the focus of this paper.

depend on whether they can be easily accommodated by collective bargaining arrangements at the district level. One of the strengths of district-level teacher bargaining is that contracts can be tailored to fit the special and often idiosyncratic needs of local teachers, administrators, taxpayers, and children. One of the dangers of state-imposed incentive plans is that they will be unable to meet the special needs of parties at the local level and, as a consequence, will fail to be implemented properly.

Accordingly, it is the task of this paper to discuss the issues involved in developing, implementing, and administering incentive pay plans through collective bargaining. We should note that proposals to implement "career ladders" are not addressed in this paper, but are considered elsewhere (Conley and Shedd, 1986). Since career ladders in education are a recent phenomenon, most work on that topic has focused on implementation issues (Southern Regional Education Board, 1985). However, since school organizations have had much more experience with merit or incentive plans, it is our task to examine the implications of these plans within the context of collective bargaining.

We should acknowledge at the start our doubts about the merits of incentive pay, and the cast of our thinking will be reflected in the pages that follow. But we will not focus here on the substantive weaknesses of incentive pay arrangements.[4] Instead, we will attempt to explicate the collective

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4 For a discussion of both the substantive strengths and weaknesses of incentive pay arrangements, see Bacharach, Lipsky, and Shedd (1984).

bargaining processes and procedures that must be considered by school districts and teachers unions that hope to develop and implement an incentive pay plan.

The Responsiveness of Unions to the Needs of Their Members

Most people are aware of the fact that the leaders of the National Education Association and the American Federation of Teachers have been highly critical of the various forms of incentive pay for teachers. At the same time, those advocating the adoption of such proposals have sought to depict such leaders as obstructionists who are unresponsive to the wishes and desires of the teachers they represent. In his address at Seton Hall University in May, 1983, President Reagan pressed the cause of incentive pay but, in an obvious reference to the NEA and AFT, said that "unfortunately it is opposed by some of the heaviest hitters in the national education lobby" (Washington Post, 1983). When the NEA criticized the president's speech, Reagan defended his position, saying, "My intent was ... to raise my voice on behalf of thousands of outstanding teachers whose compensation is held down by pay scales that fail to recognize and reward many distinguished teachers by paying them commensurate with their worth ... Until the NEA supports badly needed reforms in salary, promotion and tenure policies, the improvements we so desperately need will only be delayed."[5]

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[5]The president's remarks were contained in a letter to Willard McGuire, who was then president of the NEA. See the Washington Post, May 27, 1983, p. A2.

President Reagan's comments suggest that he believes that the leaders of the NEA -- and possibly the AFT -- do not reflect the desires and interests of the "thousands of outstanding teachers" they represent.

It would be the height of naivete to suggest that the interests of union leaders and members always coincide or that union leaders never pursue their own personal agenda, which may have little connection with the desires of their members. Union democracy has been the subject of study by industrial relations scholars since the formation of the first unions in the nineteenth century. Many years ago, A.J. Muste pointed out that a union is expected to be simultaneously an army, a business, and a town meeting (Muste, 1928). When a union confronts an employer in a bargaining dispute, it takes on some of the characteristics of an army. In the midst of a strike, for example, the discipline and solidarity of the rank-and-file are necessary if the union has any hope of prevailing over the employer. At the same time, when a union negotiates and administers a collective bargaining contract, union officials must act in a business-like fashion, and it is often the case that the technical expertise needed to conduct the union's business makes it as difficult for members to influence the conduct of the union as it is for stockholders to influence the conduct of a corporation. Given the need for unions to act in a business-like and occasionally militant fashion, the notion that they must also maintain a form of town-meeting democracy becomes an ideal that is seldom

achieved in practice.

But if the democratic character of a union is judged by the degree to which union officials need to be responsive to the needs and desires of their constituents, then it is generally agreed by scholars of the subject that a good deal of democracy exists in unions. The long history of unionism in this country demonstrates that it is perilous for union leaders to ignore the wishes of their members. The possible costs to union leaders of doing so are two-fold. First, union leaders are elected to their offices, and if they ignore the wants and needs of their members they risk being voted out of office. Second, members who are dissatisfied with the policies and practices of their union may cease to support the union; the defection of dissatisfied union members ultimately threatens the existence of the union itself.

The degree to which unions are democratic varies greatly. Research has sought to identify the factors that promote a high level of union democracy. For example, unions are likely to be more democratic if collective bargaining is highly decentralized, conducted at the local level by local union leaders and members. When the responsibility for conducting bargaining is in the hands of local-level unionists, the opportunity for membership involvement in and control of the bargaining process is enhanced and the union is likely to be more responsive to the wishes of its members. Second, unions are likely to be more democratic if the internal procedures of the union provide for frequent elections of union officers, periodic meetings of the union's membership,

and mechanisms that promote feedback and accountability. Also, where elections to union office are normally contested, turnover of union officers occurs frequently, and the membership of union bargaining teams is rotated on a regular basis, union responsiveness to membership desires will almost certainly be substantial. Third, unions are likely to be more democratic when the membership is highly educated, articulate, and dedicated to democratic values (Seidman, 1969; Sayles and Strauss, 1967; Lipset, Trow and Coleman 1962; and Strauss, 1977).

It should be obvious that the correlates of union democracy enumerated above are all characteristics of teacher unionism in this country. And it should, therefore, come as no surprise that both the NEA and AFT are often viewed as two of the most democratic unions in this nation. In particular, we need to note the decentralized structure of teacher bargaining: it is carried on at the district level between teachers and their representatives, on the one hand, and local administrators and school board members, on the other. To be sure, outside help is sometimes obtained by both parties: the unions supply their local associations with staff assistance and the districts often hire professional negotiators. But, fundamentally, the control of bargaining is in local hands.

In contrast, collective bargaining in the private sector is normally much more centralized. It is often conducted on an industry-wide or company-wide basis by top union leaders and corporate officials. Local union officers have a role to play in

negotiating supplementary agreements and administering contracts, but their influence over the union's most critical bargaining policies may be limited and indirect. It is the president and vice-presidents of the UAW that negotiate that union's key contracts, and such contracts set the parameters for contracts negotiated elsewhere within the union's jurisdiction.

But the presidents of the NEA and AFT do not normally involve themselves in the negotiation of teacher contracts (albeit there have been some notable exceptions to this rule), and they are even less involved in contract administration. The presidents and top officials of the two teacher unions may be effective spokespersons for their union, may play an important role in political affairs, and may exert a powerful influence on the goals and priorities of their unions, but it is local leaders that carry out the unions' most important business, collective bargaining.

Given the decentralized structure of teacher bargaining, and the close interaction between teachers and teacher representatives that decentralized bargaining entails, it is highly unlikely that the positions assumed by teacher negotiators in bargaining somehow misrepresent the priorities of those in whose name they bargain. Therefore, the view that the leaders of the two teacher unions are blocking the adoption of incentive pay plans that "thousands of outstanding teachers" would otherwise gladly accept is a view that simply does not square with the reality of teacher bargaining in this country. If large numbers

of teachers actually did favor incentive pay, we would undoubtedly see their views reflected in the positions assumed by their representatives in bargaining.

Teacher Opposition to Incentive Pay Plans

There are many reasons that explain why teachers oppose incentive pay. The problem of evaluating teachers' classroom performance objectively and without bias is, of course, a serious obstacle to the development and implementation of incentive pay. The problem is not necessarily overcome if a plan uses student achievement (measured, for example, by standardized tests), rather than the evaluation of teachers' classroom performance, as the basis of determining incentive stipends. Even if standardized tests are judged to be valid measures of student achievement -- an assumption that has been questioned by many experts -- there is the danger of creating incentives for teachers to "teach to the tests", at the expense of imparting other worthwhile skills and lessons to students.

But the real source of teacher opposition to incentive pay may not stem from the technical measurement problems associated with teacher evaluation procedures and student achievement tests. A more salient source of opposition may be teachers' recognition that incentive pay forces them to play a zero-sum game. Teachers understand that school districts work with fixed budgets: this means that the payment of more money to a group of teachers deemed to be superior will inevitably result in less

money being paid to teachers not so designated. Under such plans, teachers are forced to compete for a fixed pool of resources. To the extent that a minority are "winners," the majority will be "losers." By pitting teacher against teacher, incentive pay generates dissension and disharmony and undermines the attainment of quality education. The zero-sum nature of the incentive pay game is the ultimate reason why so many plans have foundered and failed.

Given the democratic character of teacher unionism, any scheme that promises gains for a minority at the expense of the majority will not be able to gain the broad based support among teachers necessary for it to be adopted through collective bargaining. Now it must be recognized that unions in general and teacher unions in particular do frequently negotiate contract provisions that seemingly serve to benefit only a minority of the members of a bargaining unit. Health plans, for example, are most likely to benefit only those employees who are prone to illnesses and accidents. At any point in time, only a small minority of teachers will be able to avail themselves of a hospitalization plan in a collective bargaining agreement. Yet we observe that the majority of teachers press their unions to achieve such plans.

Why is it, then, that teachers will generally support a health plan, but not an incentive pay plan? There are at least four reasons that explain teacher views on these matters. First, health plans and other insurance schemes have the characteristic

of "entitlements." Teachers automatically become eligible for benefits if they meet certain clearly defined, objective, and relatively uncontroversial criteria. Administrative discretion in determining eligibility is minimized. Second, not all teachers may be equally susceptible to illness, but a substantial majority run the risk that sooner or later they or members of their families will need the protection of a health plan. Over a period of time, therefore, the benefits provided by a health plan are likely to be distributed to a large number -- perhaps a majority -- of teachers in a bargaining unit. Third, it is clearly one thing to protect a teacher against a risk over which neither he nor others exert any control, and quite another to reward a teacher on the basis of factors over which he may exert some control, but are just as likely to depend on the kind of school to which the teacher is assigned, on the abilities of the students he or she is lucky (or unlucky) enough to draw, on the teaching abilities of his or her colleagues, on the support the teacher receives (or does not receive) from administrators, and on other factors that may have little relation to the teacher's observable classroom skills.

Fourth, health plans (and similar benefits) are almost always negotiated as part of a "package," so that even if a plan is expected to benefit only a minority of teachers, it is balanced against other items in the package that are expected to provide rewards to teachers who may not be able to take advantage of the health plan's provisions. The packages negotiated in

collective bargaining reflect carefully crafted tradeoffs that are designed to insure that available rewards are distributed to both parties and to all teachers in a fair and equitable fashion. It is always perilous for teacher and school district representatives to negotiate settlements that inordinately reward a minority of teachers at the expense of the majority. Tentative settlements that do so run the risk of failing to muster the support of a majority of teachers in the contract ratification process.

Recent research casts considerable light on the internal dynamics of teacher unions. This research confirms that it is a mistake to think of teachers as a monolithic interest group. Instead, it demonstrates that a particular teachers' union is but a coalition of various interest groups, each of which makes its own demands of the local (Bacharach and Mitchell, 1983; Bacharach and Mitchell, 1981). Teachers form "coalitions" when they find that they share a common set of interests and concerns. Frequently, these common interests and concerns revolve around the organizational processes that affect teachers' working conditions. Teachers are particularly sensitive, this research has found, to the level of bureaucratization in their schools, to the degree of autonomy they enjoy in their classrooms, to the behavior of their supervisors, and to the perceived equity of their pay system. When teachers come to believe that they are suffering from too much bureaucracy, too little autonomy, unfair treatment by their supervisors, and inequitable pay practices,

they are mobilized into action. The most common forms of this action are, first, organization into a teachers' union, second, involvement by teachers in local school politics, and third, demands by teachers on their union to redress the sources of their dissatisfaction through the bargaining process (Bacharach and Mitchell, 1983).

Many administrators oppose incentive pay because they realize -- consciously or unconsciously -- that it has a negative effect on precisely those organizational factors about which teachers are most sensitive. Since such plans require frequent, periodic evaluations of the classroom performance of both tenured and untenured teachers, a larger administrative staff is needed to manage them. The consequence is a higher level of bureaucratization. And, while incentive pay typically provides administrators with more control of teachers' classroom behavior, it necessarily also reduces teachers' classroom autonomy. Also, many teachers fear that incentive pay gives their supervisors the scope to engage in favoritism in "merit" ratings, leading to a pay system that is highly inequitable. Such negative effects provide the motivation for unorganized teachers to form unions and for organized teachers to pressure their district, through the bargaining process or the political process, for revision or elimination of the incentive plan.

There is, of course, considerable irony in the possibility that the imposition of an incentive plan may be the catalyst that mobilizes teachers into collective action. That such plans can

have this effect is more than a hypothetical possibility. In 1973, the Kalamazoo, Michigan school district introduced a comprehensive merit pay plan, which then received a considerable amount of publicity in the education literature. Some years later, Richard R. Doremus, a school superintendent, visited the Kalamazoo district to see how the plan had fared. According to Doremus, "Despite the extravagant claims of success after the first year of the program, today little remains of Kalamazoo's accountability and merit pay plans" (Doremus, 1982). Doremus further notes,

> One lasting result of the program has been the involvement of the teacher union in local school politics. Having been burned once by a reactionary board of education elected by a white backlash, the union has since worked to elect candidates sympathetic to its causes. Less than a year and a half after [the plan's implementation], six of the seven school board members were recalled (Doremus, 1982, p. 410).

Our discussion to this point has underscored the serious error incentive pay advocates commit if they believe that it is union leaders that somehow block teachers from obtaining the compensation systems they desire. The difficulty of devising a plan that somehow appeals to a majority of the teachers in a bargaining unit is the major roadblock that incentive pay advocates must overcome. One approach that might work is to offer teachers salary guarantees and other benefits that all teachers might enjoy contingent upon their acceptance of an incentive pay proposal. Another is to avoid incentive plans based on individual teacher performance and instead to use district-wide plans that pay bonuses to all teachers if student

performance meets or exceeds some jointly-determined, pre-established standard. The funds allocated for bonuses might be used for some purpose other than pay if the students in the district fail to meet the standard: For example, they might be used for additional in-service training courses or to defray the costs of courses teachers take at local colleges. In any event, a group bonus plan, though not a panacea, would have the virtue of surmounting the zero-sum nature of most incentive plans.

The Bargaining Process and Incentive Pay

The fact remains, however, that in the great majority of school districts in this country, pay and working conditions must be negotiated by teacher and school district representatives. It is our contention that the bargaining process is ill-suited to the development of incentive plans. An analysis of how the bargaining process works will demonstrate, we believe, why this is so.

When the parties sit down at the bargaining table to negotiate a new contract, typically each side will present to the other a laundry list of proposals. These proposals are often exaggerated and inflated. The parties include in their proposals items they cannot realistically expect to obtain and which they fully expect to abandon as negotiations proceed. Stevens (1963) has called this characteristic of the bargaining process "the large-demand rule." Moreover, as Stevens notes, each side knows that in the early stages of negotiations the other side is

engaging in bluff.

The ritualistic use of bluff in bargaining, particularly when each side knows the other is bluffing, has often baffled outside observers. Why do negotiators on both sides of the table routinely engage in this charade? It must be understood that bargaining ordinarily occurs in an atmosphere of uncertainty. It is the nature of the bargaining process that the precise nature of the final outcome is usually in doubt, and this uncertainty motivates the parties to engage in a certain amount of bluff and grandstanding until the pressure of the contract deadline (and the possibility of a strike) forces them to reveal their true positions. Not to employ the large-demand rule entails the risk of not obtaining all the concessions the other side is willing to make.

The exaggerated positions assumed in the early rounds of negotiations also allow the parties the opportunity to explore with each other alternatives they might not otherwise consider. They provide the parties with room to compromise and with issues that can be used for "horsetrading" as negotiations proceed. Moreover, use of the large-demand rule allows both sides to demonstrate to their constituents that their concerns have been vigorously voiced during negotiations. In addition, the large--demand rule serves the function of allowing each side to think it has "won" something through negotiations because of the concessions made by the opposing side.

As negotiations proceed, the parties sort out the issues on

which agreement is easily reached from the ones on which agreement will be difficult. Each side attempts to persuade the other of its commitment to the proposals it has made on the serious issues. To persuade the other side of its commitment, a wide variety of tactics will be employed, including threats, promises, and warnings. A party must be careful, however, not to become too overcommitted to a particular proposal, because overcommitment will make it difficult for the party to retreat gracefully in the later stages of negotiations. The delicate task of the negotiator is to be firm enough to persuade the opponent of the earnestness of his or her proposals, but flexible enough to concede without prejudice to his or her other demands, should some of the positions prove untenable.

In the final stages of negotiations, the parties attempt to discover if the minimum terms each side is willing to accept are compatible. As the end of negotiations approaches, the parties reduce both the use of bluff and the use of coercive tactics and seek ways of coordinating their approach to a point of settlement. Very often the parties engage in a sequence of reciprocal concessions: one party makes a concession and then expects the opposing party to do likewise. If the opposing side does revise its position, the first party will make an additional concession. If the opposing side does not make a concession, the first party will hold firm, and negotiations will reach impasse.

Fisher and Ury have called this process "positional bargaining":

> In positional bargaining you try to improve the chance that any settlement reached is favorable to you by starting with an extreme position, by stubbornly holding to it, by deceiving the other party as to your true views, and by making small concessions only as necessary to keep the negotiations going. The same is true for the other side (Fisher and Ury, 1983, p. 6)

Now consider the possibility of developing an incentive plan through the process of conventional, "positional" bargaining. If school district negotiators present an incentive pay proposal as part of their initial list of demands, they run the risk of the union considering the proposal merely a bluff that the district will sooner or later abandon in the course of negotiations. If the district seeks to persuade the union of the seriousness of its incentive plan proposal, it will need to employ the usual array of commitment tactics. For example, the district may use implied or explicit threats, suggesting, perhaps, that it will not be willing to agree to any of the union's demands unless the union indicates a willingness to accept the district's incentive pay proposal.

For a threat to be effective in negotiations, the party being threatened must actually believe that the threat will be fulfilled if the other side's demands are not met. If a district has a genuine commitment to its incentive pay proposal, it must be prepared to fulfill its threat if the union remains adamant in its opposition. To persuade the union of the seriousness of its intentions, a district may need to break off negotiations or to accept a strike by its teachers. Thus, the cost to school districts of pressuring teacher unions to accept incentive pay

plans is likely to be a larger number of bargaining impasses, work actions, and strikes. Many district negotiators may wonder whether the uncertain benefits of incentive pay plans are worth the costs of achieving them.

If the district advances an incentive pay proposal in negotiations, uses threats and other commitment tactics in an attempt to achieve its proposal, but then concludes that the incentive pay game is not worth the effort and abandons its proposal, district negotiators will almost certainly lose credibility with their teacher counterparts. Teacher negotiators will infer that the district had been bluffing all along. The district's loss of credibility will make it difficult for it to obtain its demands on other issues it values and will damage the prospects of it obtaining an incentive plan in future rounds of bargaining.

Moreover, if a district seriously intends to negotiate an incentive pay plan, it may find it necessary to engage in tradeoffs with the teachers union to obtain the plan. A teacher group that agrees to an incentive plan has made a critical concession and will almost certainly expect to receive something of value from the district in exchange. A district intent on achieving an incentive plan may find that the only way to do so is to offer substantial salary increases, new fringe benefits, and improvements in working conditions. Thus, the price to districts of negotiating incentive pay plans may be costlier and more liberal teacher contracts. Again, districts and taxpayers

may wonder whether the tradeoffs are worthwhile.

Furthermore, any incentive plan adopted through negotiations is likely to be the product of a series of compromises. If a teachers union is at all willing to consider the adoption of a plan, it will focus on the features of the district's proposal it finds objectionable and seek to revise them. The bargaining process requires that one side present a proposal and, if the proposal is not wholly acceptable, for the other side to offer a counterproposal. Through the give-and-take of bargaining, eventually a proposal will emerge that is acceptable to both sides. This process of mutual compromise is, of course, the hallmark of bargaining and one of its great virtues. But it means that districts may not get the incentive plans they really want, but will have to settle for watered-down versions that do not entirely serve their purposes.

Finally, the negotiation of incentive pay plans entails the consideration of exceptionally complex issues. For example, the parties may need to overhaul drastically their teacher evaluation procedures, a task that is difficult to handle in negotiations even when evaluation procedures are not linked to the pay system. The task of developing valid and reliable criteria that can be used to judge teaching effectiveness clearly requires the most careful study and deliberation.

This analysis is intended to demonstrate the pitfalls and dilemmas of developing an incentive pay plan through the bargaining process. It can be done, but the potential costs of doing so

may be very high indeed. The adversarial nature of the bargaining process hinders the use of cooperative, problem-solving techniques to resolve issues as difficult and complex as incentive pay. The rituals of bargaining, the need to simplify issues and assume positions on them, the pressures of deadlines and impasses all combine to make contract negotiations a less-than--ideal forum for the development of incentive pay plans.

Experience in both the public and private sectors confirms that similarly complex issues, such as pension plans, health and safety programs, and job evaluation systems, are seldom successfully designed and developed in negotiations. Rather, such issues are usually the subject of long-term study by both sides and are often referred to joint committees (Simmons and Mares, 1983). It is our view that if school districts and their teachers do adopt merit pay, the contract bargaining process will be used merely to ratify plans that have been designed in other forums, away from the hurly-burly of contract talks.

The Use of Labor-Management Committees in the Development of Pay Plans

The most likely forum for the design of incentive pay plans is the joint labor-management committee. Kochan has described the advantages of using joint committees to handle complex and innovative issues. Committees, Kochan says, meet the need...

> ... to be one step removed from the politics of the formal bargaining process and the day-to-day pressures on the parties. They offer a level and format for healthy discussion of the underlying problems, longer--

> term study and analysis, and experimentation with programs to deal with specific problems, as well as an opportunity to change the general climate that exists-...between labor and management (Kochan, 1980, p. 421).

Ideally, joint committees are problem-solving mechanisms that provide for regular and close contact between parties during the term of a collective bargaining agreement. In conventional contract negotiations, communications are carefully channeled and controlled. Vital information is often withheld or even misrepresented. But the establishment of a joint committee - at least in theory - should facilitate the free flow of information between the parties. Channels of communication are opened and the parties have the luxury of considering a variety of alternative solutions to their shared problems without the need that arises in contract negotiations of making firm commitments to specific proposals.

But committees are not magic potions. Even though our experience demonstrates that incentive plans are best developed through joint committees, we are fully aware of their problems and limitations. One cannot expect the conflictual nature of an issue to vanish merely by referring it to a committee. Many negotiators have created joint committees with great expectations, only to have their hopes dashed by experience.

Labor-management committees must be created in the bargaining process. If teacher and district negotiators agree that creation of a committee is desirable, they need to add language to their contract that carefully defines the committee's mandate, describes the composition of the committee, provides a regular

schedule of committee meetings, sets time limits for completion of the committee's work, and deals with whether the product of the committee's work will be binding on the parties or merely advisory.[6] Moreover, if a joint committee is to be successful, the parties must be willing to provide it with the resources it needs to perform its work. None of these matters is necessarily easy to negotiate.

For example, consider the seemingly simple matter of deciding the committee's composition. A typical approach is to give the parties equal representation. The approach, however, leaves open the possibility of tie votes on critical issues. Such votes can stalemate the committee and ultimately render it ineffective. To prevent the possibility of deadlock, one side in bargaining will sometimes demand that it be granted more seats on the committee than the other side. But it is seldom the case that the other side will agree to such a proposal. To circumvent such problems, the parties will sometimes agree to have a neutral outsider serve as chair of the committee. The outsider, presumably chosen for his/her expertise and impartiality, will be empowered to cast the deciding vote in the event of ties.[7] But

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6Occasionally, these matters are not spelled out in the contract itself, but are contained in a memorandum of understanding that serves as an addendum to the contract.

7A well known example of a tripartite committee is the Automation Fund Committee, established by Armour and Company and its two unions in 1959. See George P. Shultz and Arnold R. Weber, Strategies for the Displaced Worker (New York, N.Y.: Harper and Row, 1966) for an examination of the operation of this committee.

such a procedure is tantamount to delegating to a virtual "stranger" the power to decide issues of surpassing importance to the parties. Both sides are usually reluctant to grant such authority to a neutral, unless thay are fortunate enough to find one in whom they have unquestioning trust.

Or consider the task of insuring that the committee maintains a regular schedule of meetings. Unless negotiators specify how often a committee is expected to meet, there is the danger that the committee will never meet at all. Busy administrators and teachers always have many demands on their time and no shortage of excuses to postpone committee meetings. Many joint committees have turned out to be merely "paper" committees: the contract calls for their establishment, but they do little if any work in practice. A contract provision that sets up a time schedule of committee meetings provides some assurance that meetings will actually occur, but is no guarantee. Such a provision, however, does provide the basis for one side to file a grievance if the other side refuses to honor its contractual commitment.

It is also desirable for negotiators to provide a deadline for the committee's work. For example, a committee may be given six months, a year, or the term of the contract to complete its assignment. In the absence of a deadline, there is no compulsion on the committee to finish its work in an expeditious fashion, and a party that is dissatisfied with the direction a committee is taking can easily drag its feet.

The parties must also be prepared to supply a committee with the resources it needs to carry out its tasks. It is probably desirable for the parties to draw up a budget covering the expenses of the committee's operations. The committee will need a certain amount of money to carry on research and fact-finding activities and to cover routine expenses such as the costs of photocopying, mailing and telephoning. The amounts of money needed to support a committee's operations are not likely to be very significant, but they ought to be anticipated.

The major resources needed to insure a committee's success are the time and effort of those who are its members. The burden in this regard falls primarily on the district. Administrators must be freed from their usual responsibilities so they can fulfill their obligations to the committee. Moreover, though committees often meet after school hours, it is sometimes necessary for districts to release teachers from their classroom duties so that they can carry on with their committee assignments. Districts, need it be said, are often reluctant to grant such privileges to teachers who are committee menbers, but often there is no alternative if the committee is to complete its work successfully. Paying substitute teachers may be part of the costs of maintaining an effective joint committee. And if a committee meets only after the schoolday is over, a district should not be surprised if the union demands that its representatives on the committee receive extra compensation for their extra duties.

One of the most important issues the parties must decide is whether the final report of the committee will be binding or advisory. There are hazards either way. If the members of the committee are granted the authority to make the issue of their deliberations binding on both parties, they are likely to approach their duties with utmost seriousness and commitment. But experience shows that if committees are granted this authority, their deliberations are less likely to take on a problem--solving, cooperative character and more likely to be exercises in conventional, polemical bargaining, which defeats the purpose of creating the committee in the first place.

Most joint committees, therefore, are limited to making recommendations that either party may reject. Managers in particular seem to insist on this approach. For example, a study of joint health and safety committees concluded:

> Perhaps the central theme running through the management view of the role of these committees is that they are advisory bodies with the power to make recommendations, not decision-making bodies with the power to establish or implement policies... (But to be sustained over time, committees) need to produce identifiable changes (Kochan, Dyer and Lipsky, 1977, p. 24-25).

Thus, if an advisory committee devotes long hours to the development of recommendations that, in the end, fail to be adopted by the parties, the members of the committee will come to view their efforts as a waste of time and ultimately the committee's credibility will be undermined. In order for an advisory committee to be effective, committee members need to develop innovative methods to exert influence over those to whom they

report. This means that committee members must be skilled at lobbying and other policital activities if their recommendations are to gain acceptance.

Finally, the parties must try to insure that joint committees are buffered from the collective bargaining process. Not only must the parties guard against using the committee as a forum for extending the conventional negotiating process, they must also avoid using committee meetings to air grievances. One way to insulate committee proceedings from the negotiating process and the grievance procedure is to make sure that the individuals who sit on the committee are different from those who handle negotiations and grievances. By separating these roles, the parties can minimize the spillover of conflicts that arise in other forums to the committee process (Kochan, Dyer, and Lipsky, 1977).

A joint committee may be the best mechanism for the development of incentive plans, but anyone who has ever sat on a committee realizes, at least intuitively, the limitations of such bodies. It is only too easy to bury an issue by referring it to a committee. And there is always the peril that the workload of a committee will be distributed unevenly, with one or two motivated members bearing the bulk of the burden. Committees have also been known to produce unwieldy and strange proposals: we recall the old saying that a camel is an animal that was produced by a committee. But apart from all the other problems discussed here, decades of experience with joint committees

demonstrate that the most important ingredient needed to make them effective instruments is the commitment of the parties. Absent a sincere desire by both parties to address their mutual concerns in a cooperative and problem-solving fashion, all their efforts to deal with procedural safeguards are probably doomed to failure (Kochan, Dyer, and Lipsky, 1977).

The Implementation and Administration of Incentive Pay Plans Under Collective Bargaining

Fisher and Ury (1983) have pointed out that bargainers often deal with a difficult substantive issue by "fractionating" the issue into "smaller and perhaps more manageable units." At some point, of course, school districts and their teachers will need to confront their differences on the substance of various incentive pay proposals directly. But these differences may be more manageable if, following Fisher and Ury's lead, the parties are willing to "invent agreements of different strengths" and to "change the scope of a proposed agreement." For example, the parties may be able to make more headway on incentive pay if they can agree that any plan they adopt will be merely provisional, and not permanent. A provisional agreement would have the character of an experiment that the parties can easily drop if it proves unworkable. The danger with a provisional incentive pay agreement is that a party, knowing that such a plan may be abandoned if the experiment proves unsuccessful, may work to insure that result. A provisional agreement only makes sense if both parties, acting in good faith, are willing to give the

experiment a fair test.

Another method of experimenting with incentive pay is to implement a plan in only one or a handful of schools, retaining the single salary schedule in the district's other schools. After a sufficient period of time, the parties would be able to compare the performance of teachers in schools with and without incentive pay and determine whether the scheme has any of the desirable effects its supporters claim. Although social scientists relish these sorts of quasi-experiments, their implementation in practice may entail substantial risks for both parties, particularly of a political nature. A teacher selected to participate in such an experiment may resent playing the role of a guinea pig. Rivalries and jealousies may develop between teachers in the "experimental" schools and teachers in the "control" schools. Union leaders and administrators may find themselves caught in the crossfire, unable to persuade their teachers of the "scientific" benefits of such an experiment. The experiments can be easily contaminated, so that the results produced are virtually meaningless.[8] Nevertheless, if the parties act in good faith, have the support of the teachers, and make an honest effort to conduct a fair test, such experiments might be worthwhile.

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[8]For an interesting example of a "controlled" experiment in work reform, conducted jointly by a union and employer, that encountered severe political difficulties, see Eric L. Trist, Gerald I. Susman, and Grant R. Brown, "An Experiment in Autonomous Working in an American Underground Coal Mine," Human Relations, Vol. 30, No. 3, pp. 201-236.

When dealing with a complex and innovative issue like incentive pay, the parties should build in some means of evaluating the plan's effectiveness. A joint committee, for example, can be charged not only to develop a plan, but also to undertake periodic or ongoing reviews of how the plan is operating and whether it needs to be revised or eliminated. If a joint committee is assigned the added task of evaluation, the committee will not be merely an ad hoc body, but will become a more-or-less permanent fixture of the parties' relationship. Alternatively, the parties may decide to establish a different committee to carry out the evaluation of a plan.

The evaluation of an incentive plan, regardless of who is assigned the task of conducting it, requires that the parties carefully define, preferably in advance of the plan's implementation, the criteria that will be used to judge its effectiveness. Consideration of the criteria that might be used to judge a plan's success forces the parties to think about what they actually expect a plan to achieve. Should a plan be considered successful if it can be demonstrated that it has contributed to the improvement of student test scores? Should the parties also give weight to the effect of the plan on the recruitment and retention of teachers? Should the realized costs of a plan be a factor used in judging the success of the plan? Can a plan be considered successful if it has had a negative effect on teachers' morale and satisfaction? Often incentive plans have been implemented without due recognition of all the effects such plans

can have. After a plan is implemented, the parties may come to realize that it has had consequences the parties never anticipated or intended. Careful elaboration of the criteria that will be used to judge a plan's effectiveness will not guarantee the ultimate success of the plan, but can serve to educate the parties as to the possible effects a plan may have and thus diminish the possibility of the parties being faced with untoward surprises after a plan is implemented.

One of the major issues the parties need to consider is how to handle complaints that arise in the implementation and administration of an incentive pay plan. Almost without exception, collective bargaining contracts are administered through the grievance procedure. Usually, but not always, the parties agree to submit disputes that have not been resolved in the grievance procedure to third-party binding arbitration. Therefore, teacher unions and school districts that adopt incentive pay plans must decide whether and to what extent incentive plan grievances will be subject to the grievance procedure and to arbitration.

In most cases, the parties will decide that there is no real alternative to allowing teachers with incentive plan grievances access to the grievance procedure. An aggrieved teacher who is denied such access is likely to become a vocal opponent of the incentive pay plan. If enough teachers come to harbor grievances that cannot be redressed through contractual procedures, the continuation of the incentive plan will almost certainly be put in jeopardy. Moreover, in most jurisdictions any plan approved

by the union and the employer will be considered part of the contract regardless of whether complaints arising under the plan are subject to the grievance procedure. This raises the possibility of teachers who are denied access to the grievance procedure filing court suits to enforce their contractual rights. Accordingly, most negotiators will prefer to open the grievance procedure to teachers with incentive plan complaints, rather than face the possibility of costly litigation.

But if the parties agree to use the grievance procedure to resolve complaints arising from the administration of incentive pay plans, they will of necessity also need to consider a number of correlative issues. For example, will the grievance procedure be available only to individual teachers, or will the teachers' union also be permitted to file grievances? Many districts have fought stubbornly against giving the union the right to file grievances on other issues and they can probably be expected to take the same stand on incentive pay complaints. But a union will counter that, after all, it is the signatory to the contract and it ought to be able to insure its contractual rights through the grievance procedure.

The parties will also need to decide on appropriate time limits to govern the processing of incentive pay grievances. Most collective bargaining agreements stipulate that a grievance must be "timely filed" within a specified number of days of the occurrance that gave rise to the grievance and also require the employer to make a suitable response within a given time period.

At each step of the grievance procedure, the parties bind themselves to take appropriate action within specified time intervals. If incentive pay disputes are to be processed through the grievance procedure, the parties will need to determine if a set of time intervals suitable for handling other sorts of grievances is also suitable for incentive pay complaints.

In the private sector, a duly certified union is the sole and exclusive representative for all employees in the bargaining unit in respect to matters involving wages, hours, and working conditions. Because of this statutory requirement, courts have imposed the duty of fair representation on unions in the private sector. A union fulfills its duty of fair representation if, for example, it exercises utmost care to insure that an employee's grievance is processed "without hostile discrimination, fairly, impartially, and in good faith".[9] In states with teacher bargaining laws, a union is also considered to be the exclusive representative of the employees in a bargaining unit. Accordingly, following the private sector's lead, a growing number of courts are imposing the duty of fair representation on unions operating in the public sector (Aaron, 1977). If a teacher grieves because the teacher believes he or she was unjustly denied an incentive pay stipend, the union is likely to be required to process the complaint with as much vigor as it can possibly muster. To do otherwise is to risk being charged by the

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[9]The quoted phrase is from the landmark Supreme Court case on the duty of fair representation, Steele v. Louisville and Nashville Railroad, 323 U.S. 192 at 204 (1944).

grieving teacher with a breach of its duty of fair representation.[10]

Because of the zero-sum nature of most incentive pay plans, however, a union is likely to face a serious dilemma in its processing of grievances filed by individual teachers. If the available pool of incentive plan money is fixed, a union that helps one aggrieved teacher to obtain an incentive stipend, by its action may cause another teacher to lose a stipend. Understandably, no union likes to be put in this no-win position and a union that anticipates such situations arising will probably seek suitable guarantees from the district to avoid them.

Finally, the parties must decide whether incentive complaints that are not resolved in the grievance procedure can be submitted to arbitration. Although arbitration is the final step in approximately 95 percent of all private-sector contracts, its use is less widespread in teacher bargaining. In place of arbitration, the parties in teacher bargaining will sometimes empower the board of education to resolve unsettled grievances. Most unions, however, object to such a procedure, since the board is not viewed as a neutral and impartial body. And there is the possibility that if arbitration is not used, teachers will ceek to have their grievances heard by the courts, a costly alternative that the parties may want to avoid.

If the parties contemplate using arbitration to settle

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10 It might also be noted that in duty of fair representation cases the employer shares liability with the union.

incentive plan grievances, they should be aware of how arbitrators typically handle such cases. Interestingly, in researching this paper, we were unable to locate any published arbitration decisions that deal with teacher merit pay plans. There have been, however, numerous reported cases dealing with merit pay grievances in the private sector, and these cases provide some clues as to how arbitrators are likely to deal with teacher cases.

Arbitrators have generally upheld whatever merit system the parties have agreed upon, even if the system seemed vague and arbitrary. In addition, arbitrators have been extremely reluctant to substitute their judgement on merit awards for the judgement of the parties.[11] They have usually insisted, however, that performance evaluations that lead to merit increases be made by individuals who are "competent" to conduct them. Many a grievant has tried to persuade an arbitrator that the denial of a merit increase was capricious and discriminatory. Typically, however, the grievant will lose the case unless the grievant can show the arbitrator that he or she received a rating equal to the rating other employees received and that the other employees were paid increases but the grievant was not. It is also possible for a grievant to win in arbitration if the grievant can demonstrate that the factual elements underlying his or her ratings were in error. But otherwise arbitrators have given employers and

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11 We are grateful to Sue Dawson for making her research on this topic available to us.

unions wide latitude in administering incentive pay plans. Experience with the arbitration of merit pay cases in the private sector suggests that if school districts and teacher unions design and implement ineffective merit or incentive plans, they cannot expect arbitrators to rescue them from their own invention.

Conclusion: The Search for Constructive Solutions

In this paper we have tried to provide a road map for school districts and teacher unions that hope to develop and implement an incentive pay plan through collective bargaining. We have taken particular care to identify the landmarks that the parties must recognize in their journey if they hope to reach their destination. If our discussion has emphasized the difficulties the parties are likely to encounter along the way, it is not because we believe that collective bargaining is an unsuitable vehicle for the parties to use to solve their shared problems and concerns. On the contrary, we hold the conviction that collective bargaining can serve as an effective means of addressing not only the interests of teachers but also those of administrators and the public as well. In our view, collective bargaining does not create conflicts on issues such as incentive pay: it merely serves to clarify and heighten the parties' awareness of apparent conflicts that would exist even if teachers were not represented by a union.

What collective bargaining provides is a structure and set

of processes for dealing with potentially conflictual issues. It generates pressures on the parties to find ways of defining issues so that the interests of both sides might be served. It encourages the parties to order their overall priorities and not merely to focus on their preferences on a particular issue. It sets the stage for the parties to engage in tradeoffs consistent with their priorities, so that resultant bargains involve not simply concessions that one side makes to the other, but compromises that provide benefits to both parties.

Collective bargaining works best when it provides the means for the parties to grapple with underlying problems. It works less well when it narrows the scope of the parties' discussions to one particular solution (such as incentive pay) to a broader problem. Recently, teacher unions and school districts have been urged to develop and implement incentive pay plans. The underlying problem the parties ought to address, however, is whether a compensation system has any relation to the quality of education provided by our schools. Collective bargaining can be a constructive means of addressing this broader issue.

There has been a considerable amount of research on the factors that distinguish "effective" from "less effective" schools. One of the most important findings of this research is that teachers and administrators in effective schools treat education as a collegial effort directed at common goals and conducted in a coordinated and cooperative fashion. In other words, in the most effective schools teachers strive to work

together, not separately as individuals (Edminds, 1982; Little, 1982a; Little, 1982b; Sweeney, 1982; Wynne, 1981).

One of incentive pay's critical flaws is that most plans attempt to link individual incentives to individual performance. But research demonstrates that this is the wrong approach to achieving effective schools. Instead, we should seek compensation plans that promote teamwork, cooperation, and collegiality among teachers. Past experience with incentive plans provides ample evidence that they tend to foster dissension, rivalry, and jealousy among teachers. We will fail to improve education in this country if we use compensation plans premised on the view that education is the task of a single teacher, rather than the collective product of a group of teachers working in concert.

In private industry, the defects of incentive pay systems have been understood for many years. Many corporations have long since abandoned the notion that incentive pay promotes employee productivity. But in recent years many private employers have experimented with employee participation and quality-of-working life programs and have discovered that their use significantly improves the productivity and satisfaction of their employees. These employers have concluded that enhancing the intrinsic rewards of the jobs they provide is a far more effective means of stimulating employee performance than traditional incentive pay schemes. Yet only a handful of school districts have considered the use of quality-of-working life programs with teachers.

It is ironic that the business leaders who helped produce the school reports that were published over the last few years and who manage organizations that routinely employ the full panoply of contemporary human resource management methods should fail even to consider their applicability in public education. Yet in our conversations with numerous personnel managers, who are often ideological allies of President Reagan, we have discovered that they frequently express deep skepticism concerning the use of incentive pay, a skepticism that seldom seems to be voiced in more public arenas. Similarly, in our conversations with school administrators, teachers, and union leaders across the country we have found a willingness by all parties to acknowledge the shortcomings of current school management practices and to entertain the suggestion that experimentation with innovative approaches is highly desirable. It is our conviction that the political debate over incentive pay has served to accentuate the differences between and among the various advocates, and to obscure the scope of their common concerns and shared interests. Building on this foundation of common interests, the parties in collective bargaining, with the support of an enlightened public, should be able to rise above the political fray in the search for truly constructive solutions for our nation's educational ills.

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